

**MISSOURI COURT OF APPEALS
WESTERN DISTRICT**

COMPLETE TITLE OF CASE:

TREASURER OF THE STATE OF MISSOURI –
CUSTODIAN OF THE SECOND INJURY FUND,

Appellant

v.

PHILLIP COOK.

Respondent

DOCKET NUMBER WD72019

DATE: October 26, 2010

Appeal From:

APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS COMMISSION

Appellate Judges:

Division Four

Lisa White Hardwick, C.J., James Edward Welsh, J., and Charles E. Atwell, Sp. J.

Attorneys:

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Counsel for Appellant,

Attorneys:

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Counsel for Respondent

**MISSOURI APPELLATE COURT OPINION SUMMARY
MISSOURI COURT OF APPEALS, WESTERN DISTRICT**

**TREASURER OF THE STATE OF MISSOURI –
CUSTODIAN OF THE SECOND INJURY FUND,
Appellant, v. PHILLIP COOK, Respondent**

WD72019

Labor & Industrial Relations Commission

Before Division Four Judges: Lisa White Hardwick, C.J., James Edward Welsh, J., and Charles E. Atwell, Sp. J.

The Missouri State Treasurer as Custodian of the Second Injury Fund appeals the Labor and Industrial Relations Commission's decision that the Second Injury Fund is liable to Phillip Cook for permanent total disability benefits. The Second Injury Fund argues that the Commission erred in awarding Cook benefits because his claim against it was time barred, and therefore, the Commission lacked the authority to consider the claim. The Second Injury Fund also argues that there was not sufficient competent evidence to support the Commission's award.

AFFIRMED.

Division Four holds:

(1) Cook's claim for compensation against the Second Injury Fund was not time barred. Section 287.430, RSMo 2000, provides that a claim against the Second Injury Fund must be filed within two years after the date of the injury or "within one year after a claim is filed against an employer or insurer pursuant to this chapter, whichever is later." The plain and ordinary meaning of a claim that is filed "pursuant to this chapter" is broad enough to encompass both lawsuits and disputes settled informally pursuant to section 287.390, RSMo. Because Cook filed his claim within one year after he filed a section 287.390 stipulation for compromise settlement with his employer, his claim was timely and the Commission had the authority to consider it.

(2) Competent and substantial evidence supported the Commission's determination that the combination of Cook's preexisting disabilities and his primary work injury rendered him permanently and totally disabled. The medical and vocational experts' opinions, along with Cook's testimony, indicated that no employer would reasonably be expected to hire Cook in his present physical condition. The Commission found this evidence to be credible, and we defer to its credibility determination.

Opinion by: James Edward Welsh, Judge

October 26, 2010

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THIS SUMMARY IS UNOFFICIAL AND SHOULD NOT BE QUOTED OR CITED.
